



2024:CGHC:38635

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**  
**MAC No. 938 of 2019**

Branch Manager Hdfc Ergo General Insurance Co. Ltd. Branch Office  
Ambedkar Chowk, Ambikapur, Thana And Tehsil Ambikapur, Distrtict-  
Surguja, Chhattisgarh. Regional Officer At Dam Tower, 204-205, New  
Palasia, Indore, Madhya Pradesh.

**... Appellant/Insurer**

**versus**

1. Lalita Ekka W/o Late Shri Prakash Ekka Aged About 47 Years.
2. Ranjit Ekka S/o Late Shri Prakash Ekka Aged About 36 Years.
3. Ashwani Ekka S/o Late Shri Prakash Ekka Aged About 19 Years.
4. Ku. Asinta Ekka D/o Late Shri Prakash Ekka Aged About 17 Years,  
being a minor represented Through her natural guardian (Mother Smt.  
Lalita Ekka).

All are R/o Sattipara, Near Arvind Press, Thana And Tehsil Ambikapur,  
District- Surguja, Chhattisgarh. (Claimants).

5. Sunil Kumar Bharti S/o Shri Ram Sakal Bharti Aged About 23 Years  
R/o Nadhira Babhani, Thana And District- Sonbhadra, Uttar Pradesh.
6. Deepak Kumar Singh S/o Shri Khadag Bahadur Singh R/o House  
No.1, Jabalharipara, Bauripara, Shikri Road, Ambikapur, Thana And  
Tehsil Ambikapur, District- Surguja, Chhattisgarh.

**.....Respondents**

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For Appellant : Mr. Tessy Abraham, Advocate on behalf of Mr.  
Amrito Das, Advocate

For Respondent Nos.1 to 4/Claimants : None.

For Respondent No.5/Driver : None.

For Respondents No.6/Owner : Mr. Rakesh Ku Jha, Advocate  
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**Hon'ble Shri Arvind Kumar Verma, Judge**  
**Judgment on Board**

**30.09.2024**

1. By the instant appeal, the appellant/Insurance Company is challenging the legality and validity of the impugned award dated 20.03.2019 passed by the Motor Accident Claims Tribunal, Ambikapur, Distt - Surguja, C.G (in short 'the Tribunal') in Claim Case/Central Filing No.59/2017, whereby the Tribunal has awarded a total sum of Rs.7,28,125/- in death case.
2. Brief facts necessary for disposal of this appeal are that on 10.07.2016 after doing Masonry work at Kharsia Naka, Prakash Ekka (husband of respondent No.1) was returning to his home on bicycle. On the way, one truck bearing registration No.CG-15-CZ-7146 (for short, 'offending vehicle'), owned by respondent No.6 and driven by respondent No.5 rashly and negligently, dashed the bicycle of Prakash Ekka, due to which, he fell down and suffered grievous injuries and ,thereafter, succumbed to the injuries.
3. Due to unfortunate death of Prakash Ekka, claimants/respondent Nos.1 to 4, who are wife and children of deceased, filed a claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988) seeking total compensation of Rs.24,66,800/- under various heads stating that they were completely dependent on the income of the deceased.
4. Respondent Nos.5 & 6, who are driver & owner of offending vehicle, have submitted their reply to the claim application and contended that accident took place on account of negligence of the deceased himself

as on the date of the incident, he was riding a bicycle after consuming alcohol and in an intoxicated state, he rushed into the back wheels of offending vehicle due to which his leg stuck under the wheel and got fractured. After two-three days of accident, he died due to some other disease. They have also pleaded that on the date of accident the offending vehicle was having valid permit, registration and driving license and it was fully insured with the non-applicant No.3-Insurance Company (appellant herein), hence, the insurance company is liable to pay compensation, if any awarded by the Tribunal.

5. Appellant/Insurance Company submitted its reply to claim application and denied all adverse pleadings made therein. It was pleaded that the insurance company is not liable to pay any amount of compensation as on the date of alleged accident, offending vehicle was driven in breach of condition of insurance policy.
6. Learned Claims Tribunal after considering the pleadings and evidence of the respective parties has partly allowed the claim application vide impugned award and awarded total compensation of Rs.7,28,125/- by holding that Prakash Ekka (husband of respondent No.1) has died in the alleged accident occurred due to rash & negligent driving of offending vehicle by non-applicant No.1/Sunil Kumar Bharti (respondent No.5 herein).
7. Learned counsel appearing for the appellant/Insurance Company submits that the Tribunal has committed grave error in passing the impugned award and directing the Insurance Company to pay the amount of compensation to the claimants. The learned Tribunal ignored that the claimants have failed to prove the fact that alleged accident

took place by the offending vehicle. Claimants did not examine any eye witness of the accident, however, accident took place on 10.07.2016 and FIR was registered on the same day against unknown vehicle. Later on, after completion of investigation, vehicle bearing registration No.CG-15-7646 was seized in this case. The charge-sheet does not involved the insured offending vehicle, but despite that the offending vehicle has been implicated in this case. Tribunal erred in recording the finding that the vehicle bearing No.7646 was a typographical mistake/error. Learned Tribunal failed to appreciate the fact that the burden to prove the factum of accident is upon the claimants, however, claimants have utterly failed to discharge the said burden. In connivance with the claimants, respondent No.5 & 6/driver & owner of offending vehicle have supported the fact of the alleged accident, but denied the rash and negligent driving of offending vehicle by the driver, thus itself demonstrate that offending vehicle has been falsely implicated in this case after a lapse of more than 6 months of accident only to extract money from the Insurance Company.

8. Learned counsel for respondent No.6/Owner of offending vehicle submits that deceased himself is responsible for the accident as in intoxicated state, he rushed into the back wheel of offending vehicle and suffered injuries. Deceased died due to some other disease after two-three days of accident. He further submits that on the date of accident, driver of offending vehicle was possessing valid and effective driving license, said vehicle was having valid permit and registration and it was fully insured with the non-applicant No.3-Insurance

Company, hence, insurance company is liable to pay the amount of compensation to the claimants.

9. Heard learned counsel for the parties and perused the impugned award as well as record of the case.
10. Perusal of records would show that alleged accident took place on 10.07.2016 near the petrol pump, ring road at Surguja and FIR was registered against the unknown vehicle after lapse of two months on the basis of marginal intimation, however, the Police after investigating the matter found that the offending vehicle (truck bearing registration No.CG-15-CZ-7146) was involved in the alleged accident and seized the said vehicle. Furthermore, driver and owner of offending vehicle in their pleadings before the Tribunal have admitted the fact of accident by the offending vehicle, but denied the fact of rash and negligent driving of said vehicle by the driver. No doubt there is no eyewitness in this case produced by the claimants side, but at the first instance, negligence on the part of driver of offending vehicle is evident as after accident, driver was run away from the spot along with the vehicle. If negligence is not on the part of the driver than after accident, he took the injured (since deceased) to the Hospital. Appellant/Insurance Company also failed to adduce any evidence before the Tribunal with regard to non-involvement of the offending vehicle in the alleged accident. After admission, it is clear that accident took place by the offending vehicle. **Hence, in this case, principle of res ipsa loquitur is applied.**
11. In view of above discussion, this Court is of the considered opinion that learned Tribunal has rightly passed the impugned award and fastened

the joint liability upon the non-applicants ie Insurance Company, Owner & Driver of offending vehicle to pay the amount of compensation to the claimants, which does not call for any interference.

12. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed.

**Sd/-**  
**(Arvind Kumar Verma)**  
Judge

J/-